

REMARKS/ARGUMENTS

Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the foregoing amendments and the following remarks is respectfully requested.

Claims 1-9 and 17-28 are presented for the Examiner's consideration. Claims 1, 2, 17, 19, 27 and 28 are currently amended and claims 10-16 have been canceled.

The following response will address each of the Examiner's comments, objections and rejections in the order they were presented in the March 16th Office Action. Applicants note that the Examiner has entered the Applicants amendment filed on July 28, 2004, per the request set forth in the RCE filed on October 5, 2004.

It is noted by the Examiner that the amendment to the claims as presented in the July 28, 2004 Amendment, entered per the request of the RCE filed on October 5, 2004, was improper, since the term "the" was not underlined in line 9 of claim 27. Applicants' undersigned representative apologizes for this oversight, and claim 27 has been amended above without underlining the term "the" at line 9, since the amendment error has been pointed out by the Examiner and the Examiner indicated that the Amendment was entered.

The Examiner did not approve the drawings previously filed since the photomicrographs of Figures 5A-7 could not be located. In a telephone message left by the Examiner on the voice mail of the undersigned, the Examiner indicated that the photomicrographs have been located and that this portion of the Office Action could be disregarded.

The Examiner also states in the Office Action that the submitted drawings did not include corrections of all the objections to the drawings, in particular to Figures 1B and 1C. Applicants are submitting herewith a new sheet of drawings including Figures 1B and 1C. Applicants' undersigned representative, based on Applicants file, was under the impression that formal drawings for Figures 1B and 1C were previously filed. However, upon reviewing the Private Pair and the file image, it was discovered that formal drawings for Figures 1B and 1C are not part of the Patent Office's electronic file.

The Examiner's only objection made to the drawings submitted on July 28, 2004, entered per the request of the RCE filed on October 5, 2004, is that Figure 1F shows a cross-sectional view and the description in the specification is not consistent with the drawing. Applicants direct the Examiner's attention to the paragraph beginning at page 10, line 3, as amended in the

amendment submitted on July 28, 2004, entered per the request of the RCE filed on October 5, 2004, which specifically states Figure 1F shows a cross-sectional view. Therefore, the Examiner's objection appears to be without basis.

Since the Examiner did not point out any tenable errors in the drawings submitted on July 28, 2004, entered per the request of the RCE filed on October 5, 2004, Applicants respectfully request that the previous drawings be entered by the Examiner, in addition to the attached sheet of drawings including Figures 1B and 1C. It is respectfully submitted that these drawings are free of any objections previously made by the Examiner and should be entered, since they materially reduce the numerous issues raised by Examiner in this application.

On page 3 of the Office Action, the Examiner repeats previous objections to the drawings. The drawings submitted in the July 28, 2004 Amendment, entered per the request of the RCE filed on October 5, 2004, with the possible exception of Figures 1B and 1C, address all of these objections. The Examiner's attention is directed to the comments made in the July 28, 2004 amendment, which the Applicant's hereby incorporate by reference for the sake of brevity. Again, Applicants respectfully request that the previous drawings be entered by the Examiner, in addition to the attached sheet of drawings including Figures 1B and 1C, since they materially reduce the numerous issues raised by Examiner in this application.

On page 4 of the Office Action, the Examiner objects to the drawings under 37 CFR 1.83(a) on the basis that the drawings do not show the sheets, the core and the perforation lines. The Examiner's attention is directed to Figure 1F, which clearly shows the top sheet, the backsheet and the absorbent core. Therefore, these features are clearly shown by the drawings. In addition, Figures 1D and 1E show the perforation lines 71. Therefore, the Examiner's objection to the drawings under 37 CFR 1.83(a) is improper, since the noted features are shown in the drawings.

Again, entry of the previously filed drawings and the attached drawing by the Examiner would remove all of the previous discussed objections.

On page 5 of the Office Action, the Examiner objects to the specification for three reasons. The first, the Examiner finds that the description of the drawings is inconsistent with respect to reference numerals 36 and 36'. The Applicants have amended the paragraphs starting at page 7, line 5; page 8, line 18; page 8, line 25; page 10, line 11 and page 19, line 29, to make the specification consistent, referring to both 36 and 36'.

Second, the Examiner states that the definition of the engagement section is rendered unclear by the amendments to the claims. Applicants have amended claims 2 and 19 by changing the language "such ... engaged" (second occurrence) to the term "which", as suggested by the Examiner. Applicants believe that this amendment should alleviate any indefiniteness in the definition of the term "engagement section".

Third, the Examiner states that the term "Fruit of the Loom" should be in all capital letters. Applicants have adopted the Examiner's suggestion.

In view of the foregoing amendments and remarks, Applicants respectfully submit that objections to the disclosure should be overcome.

With respect to the claim objections set forth on pages 5 and 6 of the Office Action, all of the Examiner's suggestions have been adopted. Hence, these objections should be overcome by the foregoing amendments.

Claims 10-16 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Applicants respectfully point out that the foregoing amendments cancel claims 10-16, hence this rejection is rendered moot in view of the foregoing amendments.

Claims 1-28 were rejected under 35 U.S.C. § 102(e), as allegedly being anticipated by Hammons et al., U.S. Patent Application Publication US2003/0004484. This rejection is respectfully **traversed** to the extent that it may apply to the claims, as amended.

Hammons et al. fail to anticipate claims of the present application, contrary to the Examiner's assertion. Specifically, Hammons et al. do not teach or suggest that **one of the first fasteners is unengaged with the cooperating fastener and the unengaged first fastener component is positioned adjacent the backsheet layer so it is adapted to engage the fabric of an undergarment.** Applicants specifically request the Examiner to point out where Hammons et al. specifically teach this limitation. Applicants' undersigned representative has reviewed Hammons et al. and is unable to find where this limitation is taught.

Hammons et al. fail to disclose the invention as claimed and clearly cannot support a *prima facie* case of anticipation. While Applicants would agree that Hammons et al. teach that mechanical fasteners may be used, Hammons et al. clearly suggest, by way of the description

of the drawings, that adhesive fastening systems are preferred. For example, in the brief description of the drawings, the description of top plan view of the sanitary napkin FIGS. 1, 7, 9, and 11 clearly describe the sanitary napkin as having an adhesive on the flaps as the fastening system.

In addition, there is no teaching within Hammons et al. which directs one skilled in the art to use a mechanical fastening system as claimed. While Hammons et al. teach that mechanical fastening systems may be used, Hammons et al. do not teach that a first fastener component, with its plurality of engagement members, is positioned to engage the undergarment, which the sanitary napkin is designed to protect, as set forth in the present claims 1, 17, 27 and 28. Therefore, the disclosure of Hammons et al. fail to teach all of the claim limitations of the present claims, hence the rejection under 35 U.S.C. § 102(e) is untenable.

In order for the sanitary napkins of Hammons et al. to be able to engage the undergarment positioned between the wings and the backsheet, the fastener component with the engagement members must be placed on the wings or flaps on the side opposite the absorbent, so that when wrapped around the undergarment, as shown in FIG. 6 of Hammons et al., the engagement members will contact the undergarment. However, in the configurations of Hammons et al., purportedly having a first fastener component and a cooperating fastener component on both wings or flaps, i.e., those shown in FIGS. 7-12 of Hammons et al., Hammons et al. fail to teach or suggest that the fastener with the plurality of engagement members should be located on a surface of the wing or flap which will come into contact with the undergarment, in the description of these drawings. (See paragraphs [0121], [0122], and [0123]). In lack of such a teaching, Hammons et al. cannot anticipate the present claims.

Applicants again request that the Examiner withdraw this rejection or specifically point out where Hammons et al. teach the claim limitation requiring that one of the first fasteners is unengaged with the cooperating fastener and the unengaged first fastener component is positioned adjacent the backsheet layer so it is adapted to engage the fabric of an undergarment.

Claims 1, 6-10, 15-18 and 24-28 were rejected under 35 U.S.C. § 102(b), as allegedly being anticipated by Bien, U.S. Patent 5,704,929 and thus Mattingly, U.S. Patent 4,608,047. This rejection is respectfully **traversed** to the extent that it may apply to the claims, as amended.

Bien fails to disclose the invention as claimed and cannot support a *prima facie* case of anticipation. While it might be argued that Bien discloses use of a mechanical fastening system on the wings of a sanitary napkin by its reference to Mattingly, both Bien and Mattingly lack a specific teaching of having a first fastener component having a plurality of engagement members and a cooperating fastener component on different surfaces of both wings or flaps of the sanitary napkin, such that the first fastener component is positioned on the wings or flaps in a manner which allows the first fastener component on one wing or flap to engage the undergarment positioned between the wings or flaps and the backsheet. Applicants specifically request the Examiner to point out where Bien specifically teaches this limitation. Applicants' undersigned representative has reviewed Bien and is unable to find where this limitation is taught.

In the statement of the rejections, it is rather clear that the Examiner is reading more into the teachings of Mattingly than actually exist in Mattingly. Specifically the Examiner states on page 7, paragraph 10 of the Office Action:

"It is noted that portions of Mattingly are considered to teach that the cohesive structure in Figure 10 could be adhesive or VELCRO [sic, VELCRO®] instead, i.e. the fastener components is the one fastener directly adjacent exterior [sic, the exterior] of the undergarment".

To support this statement, the Examiner relies on column 6, line 44 - column 7, line 5, column 2, lines 17-32 and column 8, lines 9-41 of Mattingly.

This statement is overly broad and goes beyond the teachings of Mattingly. Nothing in Mattingly suggests that the VELCRO® system can be used in a configuration shown in Figure 10 of Mattingly. A careful review of the sections of Mattingly noted by the Examiner reveals the following: 1. Mattingly suggests that mechanical attachment means may be used, in addition to adhesive and cohesive means to attach the flaps to one another; 2. The cohesive means is shown in Figure 10 of Mattingly; and 3. The mechanical means is shown in Figure 11 of Mattingly. Specifically, column 6, line 61-column 7, line 5 states:

"Still other means for affixing the flaps in place will occur to those skilled in the art such as, for example, replacing the adhesive system with cohesive material, i.e., material capable of adhering to itself but not to other substrates. In this way both sides of the **flap may be coated with cohesive material 34' as illustrated in FIG. 10**, and no unique order of folding is required. This also carries the advantage that there is no adhesive applied to the outer crotch portion of the undergarment. In still another embodiment, **mating elements of hooks 35 and loops 35'**, the so-called

Velcro binder system (Velcro is a trademark of Velcro USA, Inc.) may be employed. ***This is illustrated in FIG. 11.*** (emphasis added)

Clearly, the above quoted passage shows if a cohesive system is used, it is to be used in the configuration of Figure 10 and if a Velcro® is used, it is used in the configuration of Figure 11. Nothing in Mattingly states or teaches that the a Velcro® system can be used in the configuration of Figure 10, as the Examiner has stated or implies. Therefore, the Examiner's premise for the rejection is unsupported by the actual teachings of Mattingly.

For this reason, not to mention that not all of the structure of the present claims is taught by Bien and Mattingly, as argued by the Examiner, the Examiner has not established a prima facie case of anticipation. In order for a rejection under 35 U.S.C. § 102 (b) to be tenable, all of the limitations of the claims must be taught by a prior art reference. Since, the configuration of the fastener components, as claimed, are not taught by Bien (incorporating Mattingly), the rejection under 35 U.S.C. § 102(b) based on Bien is untenable and should be withdrawn.

Applicants again request that the Examiner withdraw this rejection or specifically point out where Bien teaches a first fastener component having a plurality of engagement members and a cooperating fastener component on different surfaces of both wings or flaps of the sanitary napkin, such that the first fastener component is positioned on the wings or flaps in a manner which allows the first fastener component on one wing or flap to engage the undergarment positioned between the wings or flaps and the backsheet.

Claims 4-5, 13-14 and 22-23 were rejected under 35 U.S.C. § 103(a), as allegedly being unpatentable over Bien, U.S. Patent 5,704,929 in view of Leak et al. U.S. Patent 5,763,041. This rejection is respectfully **traversed** to the extent that it may apply to the claims, as amended.

As is noted above, both Bien and Mattingly lack a specific teaching of having a first fastener component having a plurality of engagement members and a cooperating fastener component on different surfaces of both wings or flaps of the sanitary napkin, such that the first fastener component is positioned on the wings or flaps in a manner which allows the first fastener component on one wing or flap to engage the undergarment positioned between the wings or flaps and the backsheet. Leak et al. fail to cure this fatal deficiency of Bien.

Leak et al. is directed to laminates suited for use as the loop components of hook and loop fasteners. According to Leak et al., a conventional separate, discrete patch of loop

material is undesirable. See Leak et al. at col. 9, lines 15-22. While it might be argued that Leak et al. teach that its laminate can be used as a loop component anywhere hook and loop fasteners are employed, Leak et al. specifically teach replacing a conventional, discrete patch of loop material such as taught by Mattingly with a laminate that forms the outer cover of a diaper to provide engagement at any location on the outer surface of the diaper. However, Leak et al. fail to suggest having a first fastener component having a plurality of engagement members and a cooperating fastener component on different surfaces of both wings or flaps of the sanitary napkin, such that the first fastener component is positioned on the wings or flaps in a manner which allows the first fastener component on one wing or flap to engage the undergarment positioned between the wings or flaps and the backsheet.

In order for a combination of references to establish a prima facie case of obviousness, the combination of references must teach the invention, as a whole, including all of the limitations of the claims. See In re Royka, 180 USPQ 580 (CCPA 1974). If a given combination of references does not anticipate, in the case of Bien and Mattingly as discussed above, or render obvious, in the case of Bien and Mattingly combined with Leak et al., the limitations of the independent claims, then any claim depending from the independent claim is nonobvious. See In re Fine, 5 USPQ2d 1596 (Fed. Cir. 1988).

Given that Leak et al. fail to cure the noted deficiencies of Bien, the obviousness rejection under 35 U.S.C. § 103(a) based on the combination of Bien with Leak et al. is untenable and should be withdrawn.

Claims 2-3, 11-12 and 19-21 stand rejected under 35 U.S.C. 103 as being unpatentable by U.S. Patent 5,704,929 to Bien in view of U.S. Patent 5,723,884 to Osborn, III et al. Applicants respectfully **traverse** this rejection to the extent it might apply to the claims, as amended.

As is noted above, both Bien and Mattingly lack a specific teaching of having a first fastener component having a plurality of engagement members and a cooperating fastener component on different surfaces of both wings or flaps of the sanitary napkin, such that the first fastener component is positioned on the wings or flaps in a manner which allows the first fastener component on one wing or flap to engage the undergarment positioned between the wings or flaps and the backsheet. Further, Bien lacks the teachings of having a first fastener component on both wings or flaps with a cooperating fastener component on both wings or

flaps, one of which is capable of interengaging one of the first fasteners. Osborn, III et al. fail to cure these deficiencies of Bien.

The portion of Osborn, III et al. relied upon by the Examiner, Figures 44-45, teach placing a hook material on the wings or flaps to engage the undergarment. However, Osborn, III et al. fail to teach that the hook material can engage the other flap, in particular a cooperating fastener on the other flap, as required by the present claims. Further, the hooks of Osborn, III et al. are located and designed to engage the elastic of the undergarment, as is set forth in column 50, line 55 - column 53, line 39. Osborn, III et al. do not teach having the flaps or wings contact each other such that one mechanical fastener will engage with a cooperating fastener on the other wing or flap.

In order to establish a prima facie case of obviousness, there must be some motivation or suggestion to modify the references and there must be some reasonable expectation for success. Given that the function of the flaps or wings in Osborn, III et al. is to physically attach the flaps or wings to the undergarment, without overlapping the flaps or wings, and the function of the flaps or wings in Bien (Mattingly) is to surround the undergarment without physical attachment, the purposes of the wings or flaps in Bien and Osborn, III et al. are different and one skilled in the art would not have been motivated to combine the teachings of Bien with Osborn, III et al., as the Examiner has done.

Claims 1-28 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent 6,843,785. Applicants respectfully traverse this rejection.

Applicants point out that the claims of U.S. Patent 6,843,785 are directed to a process of attaching the sanitary napkin to an undergarment. In clear contrast, the claims of the present application are directed to a sanitary napkin with a garment attachment system. The Examiner has not provided any reasons why the process of the claims of the '785 patent render the sanitary napkin claims of the present application obvious. The Examiner merely states that the claims of the present application are generic or are broader than those of the '785 patent. Applicants do not understand how the sanitary napkin claims of the present application are broader than the process claims of the '785 patent. Applicants request that the Examiner withdraw this rejection or provide clear reasons why the Examiner considers the sanitary napkin claims of the present application to be obvious over the process claims of the '785 patent. If clear reasons cannot be provided, this rejection is untenable.

Appl. No. 10/037,278
Amdt. dated June 16, 2005
Reply to Office Action of March 16, 2005

Claims 1-28 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-48 of copending Application No. 10/037,287 (published Application No. 2003/0045856).

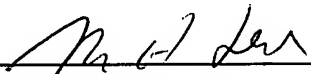
Applicants respectfully request this rejection be held in abeyance with respect to the present application until such time that allowable subject matter is identified.

The Examiner has required a restriction requirement in copending Application No. 10/037,287 (published Application No. 2003/0045856). At this time, the scope of these claims has not been determined. Further, it is pointed out that the claims of the copending application are of a different scope, and do not require all of the features of the present claims. Applicants request the Examiner to withdraw this rejection in this application and address the double patenting rejection in the copending application.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

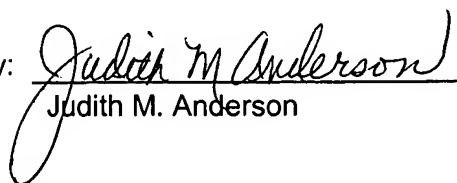
The undersigned may be reached at: 920-721-3892.

Respectfully submitted,
YVETTE L. HAMMONDS ET AL.

By: 
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CERTIFICATE OF MAILING

I, Judith M. Anderson, hereby certify that on June 16, 2005 this document is being deposited with the United States Postal Service as first-class mail, postage prepaid, in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

By: 
Judith M. Anderson

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Amendments to the Drawings:

The attached sheet of drawings includes changes to Fig. 1B and 1C. This sheet, which includes Fig. 1B and 1C, replaces the original sheets including Fig. 1B and 1C.

Attachment: Replacement Sheet
Annotated Sheet Showing Changes

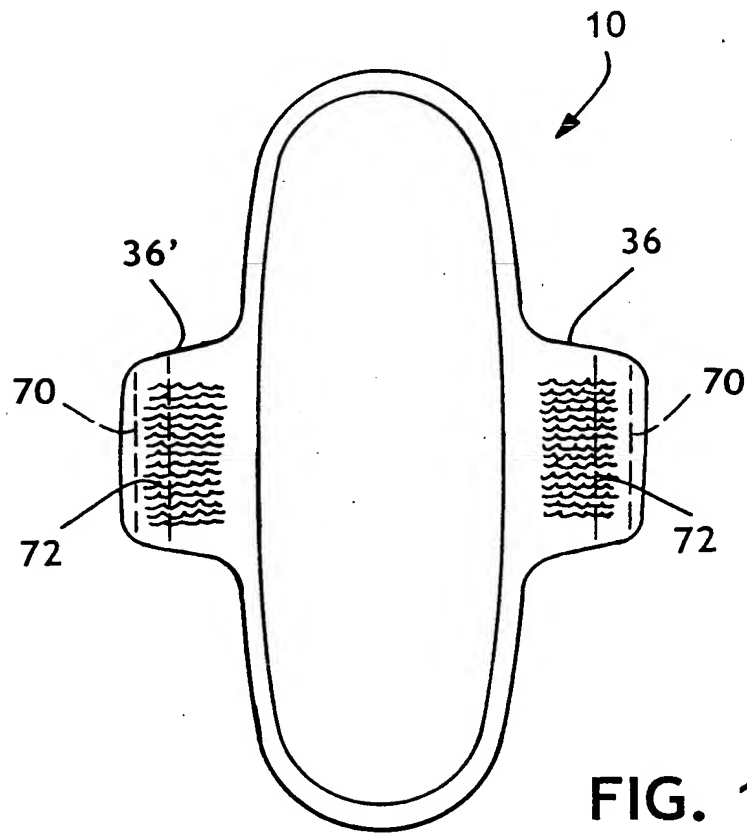


FIG. 1B

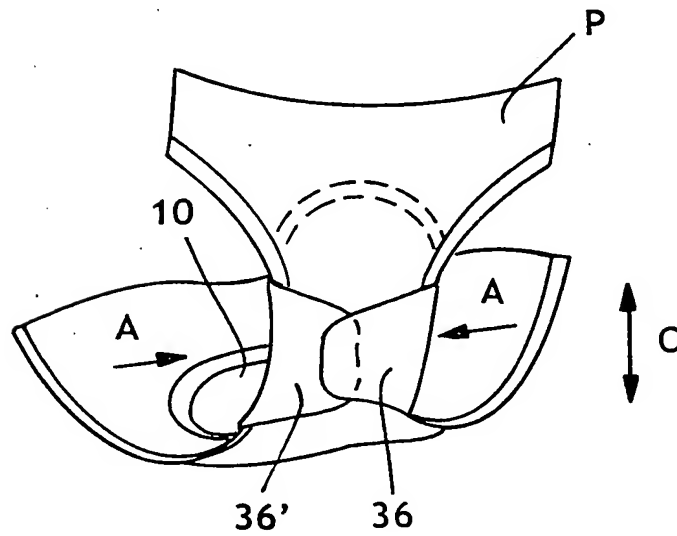


FIG. 1C